



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 18, 1996

Ms. Y. Qiyamah Taylor
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR96-2136

Dear Ms. Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102636.

The City of Houston (the "city") received a request for "any and all complaints or other documents submitted by any individual or entity to the [city] regarding the roadway located within a one mile radius of the 3100 block of Almeda Genoa Road in Houston, Texas since January 1, 1990." You assert that the requested information is excepted from required public disclosure under section 552.103 of the Government Code. You have submitted a representative sample of the requested information for our review.¹

When asserting section 552.103(a), the "litigation exception," a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation. Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish (1) that litigation is either pending or reasonably anticipated and (2) that the requested information relates to that litigation. *See Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have provided this office with a copy of a Petition showing that the city is a party to pending litigation. Our review of the records submitted shows that they relate to the pending litigation. We agree that you have established the applicability of section 552.103 and may, therefore, withhold the requested information at this time.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

In reaching this conclusion, however, we assume that the opposing party to the pending litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing party in the pending litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal flourish extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 102636

Enclosure: Submitted document

cc: Mr. Roy Camberg
Ware, Snow, Fogel, Jackson & Greene, P.C.
1111 Bagby, 49th Floor
Houston, Texas 77002
(w/o enclosure)